

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John W. Darrah	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	02 C 700	DATE	12/5/2002
CASE TITLE	James Koch vs. Warden Jerry Sternes		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry]   Jerry Sternes motion for reconsideration is denied. Enter memorandum opinion and order.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SLB courtroom deputy's initials	U.S. DISTRICT COURT CLERK 02 DEC -5 PM 1:58 Date/time received in central clerk's office	number of notices DEC 06 2002 date docketed docketing deputy initials date mailed notice mailing deputy initials	Document Number 24
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*Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990)). A motion for reconsideration cannot be used to introduce new legal theories for the first time, to raise legal arguments that could have been heard during the pendency of the previous motion, or to present evidence that could have been adduced during the pendency of the original motion. *Publishers Res., Inc. v. Walker-Davis Publ'ns, Inc.*, 762 F.2d 557, 561 (7th Cir. 1985); *In re Oil Spill by the "Amoco Cadiz" off the Coast of France on March 16, 1978*, 794 F. Supp. 261, 267 (N.D. Ill. 1992). Movants should not use a motion for reconsideration to rehash arguments previously rejected by the court. *Sikora v. AFD Indus., Inc.*, 18 F. Supp. 841, 844 (N.D. Ill. 1998).

### ANALYSIS

Respondent requests this Court to reconsider its decision of September 12, 2002. In a Memorandum Opinion and Order, this Court denied Respondent's Motion to Dismiss and held that a petition for post-conviction relief tolled the statute of limitations under 28 U.S.C. § 2244(d)(2) and *Saffold*. Respondent filed this Motion to Reconsider based on the subsequent ruling in *Brooks v. Walls*, 301 F.3d 389 (7th Cir. 2002). Respondent argues that, in *Brooks*, the Court of Appeals for the Seventh Circuit interpreted *Saffold* as counting the time after a direct appeal is final but before a petition for post-conviction relief has been filed against the one-year statute of limitations.

Contrary to Respondent's interpretation, the Seventh Circuit in *Brooks*, citing *Saffold*, held that "to be 'properly filed' an application for collateral review in state court must satisfy the state's timeliness requirements." *Brooks*, 301 F.3d at 841. In addition, the Seventh Circuit in *Brooks* did not disagree with *Saffold*'s interpretation of "pending" as used in § 2244(d)(2) as it applies to collateral review in Illinois. In *Brooks*, the Seventh Circuit held that Brooks' petition for post-conviction relief was not "properly filed" because it did not comply with Illinois's timeliness

requirements as set forth in section 5/122-1(c) and, therefore, could not toll the one-year statute of limitations under § 2244(d)(2)<sup>1</sup>. *Brooks*, 301 F.3d at 841.

As set out in this Court's earlier Memorandum Opinion and Order dated September 12, 2002, the petition for collateral review was within the time required under Illinois law.<sup>2</sup> Therefore, Respondent's Motion to Reconsider is denied.

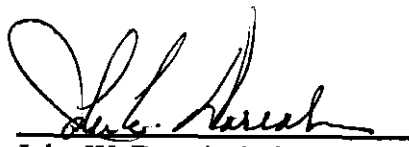
### **CONCLUSION**

For the reasons stated herein, Jerry Sternes' Motion to Reconsider is denied.

**IT IS SO ORDERED.**

Date:

December 5, 2002

  
John W. Darrah, Judge  
United States District Court

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<sup>1</sup>Section 2244(d)(1) provides that:

A 1-year period of limitations shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of –

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]

28 U.S.C. § 2244(d)(1)(A). However, “[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.” 28 U.S.C. § 2244(d)(2).

<sup>2</sup>“[Illinois’s] timeliness rule is quantitative (six months from the end of the direct appeal or three years from the conviction, whichever is sooner) . . . .” *Brooks*, 301 F.3d at 841.